



# COUNTY OF SAN DIEGO

## LAND USE AGENDA ITEM

### BOARD OF SUPERVISORS

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**DATE:** October 6, 2021

**02**

**TO:** Board of Supervisors

### **SUBJECT**

**ORDINANCE OPTIONS FOR SUBCONTRACTOR TRANSPARENCY MEASURES IN COUNTY PERMITS (DISTRICTS: ALL)**

### **OVERVIEW**

On March 17, 2021 (6), the Board of Supervisors (Board) directed the Chief Administrative Officer to seek input from stakeholders and develop options for a new ordinance to promote transparency for contractors applying for both building permits and right-of-way permits in the unincorporated communities for which the County of San Diego (County) has jurisdiction.

In requiring transparency, the County's goal is to create a culture of safety and legal compliance while ensuring that labor standards are upheld. Currently, the County verifies that contractors are in good standing with the Contractors State Licensing Board (CSLB) at the time of building permit issuance, as applicants provide their CSLB license number. The CSLB site is linked to Accela, the County's automated land use permit platform, and a building permit cannot be issued unless the license number is in good standing. However, the same verifications do not apply to any subcontractors working on the project. The options presented today for the proposed ordinance would require contractors to disclose information for their subcontractors working on projects requiring County building permits and right-of-way permits in the unincorporated communities for which the County has jurisdiction.

After seeking input from community members, community planning groups, environmental stakeholder groups, construction and building stakeholders, labor advocates, and union stakeholders, options presented to the Board today include ordinance options to achieve subcontractor transparency and disclosures during the processing of building permits and right-of-way permits, as well as short-term and long-term implementation options.

### **RECOMMENDATION(S)**

#### **CHIEF ADMINISTRATIVE OFFICER**

1. In accordance with State California Environmental Quality Act Guidelines Section 15061(b)(3), find that it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment for the reasons stated in the Notice of Exemption (on file with the Clerk of the Board); and

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2. Receive the Ordinance Options for Subcontractor Transparency Measures in County Permits and provide direction on the following options:

*Options for Building Permits:* the following are options for permit types that could require subcontractor disclosures (can select any or all of the options below):

- a. All new commercial, residential tracts (five or more lots), and multifamily construction projects (3 or more units)
- b. Commercial tenant improvement (renovation) projects that affect more than 10,000 square feet of space under the renovation
- c. Commercial tenant improvement (renovation) projects with a subcontractor contract value greater than \$25,000
- d. Projects associated with General Plan Amendments
- e. Residential permits for work done on single family residences (all new homes, remodels, additions)

*Options for Applicable Right-of-Way Permits:* the following options list permit types that could require subcontractor disclosures (can select any or all of the options below):

- a. Projects that are done in the right-of-way to provide for transport of energy, water, or sewer that are subject to State Prevailing Wage
- b. Projects in the right-of-way not subject to State Prevailing Wage
- c. Projects with a subcontractor contract value greater than \$25,000
- d. Residential projects (driveways and retaining walls)

*Options on Data to be Collected* (can select any or all of the options listed below)

- a. Subcontractor specialty, name & contact, license number, and workers compensation policy
- b. Start and end dates of subcontractor work
- c. Subcontractor address
- d. Detailed scope of work done on job
- e. Verification of OSHA or wage violations
- f. Subcontractor Disadvantaged Business Enterprise (DBE) status
- g. Special safety licenses or training requirements for a subcontractor scope of work

*Options to Submit Information* (select one of the three options listed below)

- a. Hard copy collection (6 months): Paper form. Ongoing annual staff cost of \$50,000.
- b. Short-term electronic submittal (6 months): Create a new paper form to collect subcontractor disclosure data that can be digitally scanned and uploaded/attached to building and right-of-way permits in Accela, the County's automated land use permit platform. Total one-time cost of \$20,000.
- c. Long-term electronic submittal (12-18 months): Create a new option for Accela online permitting platform to allow contractors to add disclosure data digitally in standardized information fields once a record is created. This option provides the public and the newly authorized Office of Labor Standards and Enforcement access to disclosure data available in a format that makes it easier to search and analyze. Total one-time cost of \$250,000.

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*Options for Timing of Data Collection* (select one of the four options below):

- a. Prior to permit issuance (prior to construction phases)
- b. Prior to subcontractor doing work on site (during construction phase)
- c. Within 14 days of when the subcontractor is selected and has started work (during construction phase)
- d. Prior to final inspection or final permit release (post construction phase)

The action sheet (Attachment A) includes a summary for each ordinance options for subcontractor transparency measures in County permits.

**EQUITY IMPACT STATEMENT**

Stakeholder input and community engagement identified a lack of contractor transparency as a potential impact to equity in labor standards and worker protection, including labor violations, unqualified operators, and a lack of accountability. Stakeholders commented that ongoing State enforcement and prevention efforts through the California State Licensing Board may lack resources and access to local subcontractor information.

The options presented today help address equity impacts by utilizing subcontractor disclosures to create new transparency tools to expand workforce protections and increase contracting equity. Transparency standards and disclosure tools will provide equal access to information, and better equip future enforcement and prevention efforts, both locally and as a part of the ongoing State efforts.

Community input, including from those directly impacted, shaped the development of the options to reduce the disproportionate equity impacts faced by vulnerable communities. The building permits and right-of-way project types identified in options presented today are most utilized in underserved communities and target specific project categories based on stakeholder input. Unlike the existing State efforts, these transparency and accountability efforts are established locally, including those close to the communities they serve.

**FISCAL IMPACT**

There is no fiscal impact associated with receiving the recommendations included in this board letter. The Board is considering options for staff to develop an ordinance and return to the Board for adoption and implementation at a future date. However, if the Board directs Planning & Development Services (PDS) to implement one or more of the options, there will be associated implementation costs ranging from \$50,000 in ongoing costs for hard copy data collection, \$20,000 in one-time costs for short-term electronic data collection, or up to \$250,000 in one-time costs for long-term electronic data collection. If the Board selects the hard copy data collection option presented today, the associated funding will need to be identified and appropriated for staff to begin the work. If options for data collection are not selected or the short-term or long term electronic data collection option is selected, there will be no change in the General Fund and no additional staff years.

**BUSINESS IMPACT STATEMENT**

Stakeholder outreach included groups associated with land development and construction, as well as labor groups, Community Planning & Sponsor Groups, and environmental groups, among

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others. Most stakeholders associated with labor indicated changes to increase transparency will protect workers and help further a level playing field for businesses. Stakeholders associated with development and construction noted that additional steps in the permit process, such as uploading subcontractor information, can add to the overall process time and increase the costs of development and housing. There was consensus that the format and process to upload required information needs to be user friendly and easy to access to minimize impacts on projects.

**ADVISORY BOARD STATEMENT**

N/A

**BACKGROUND**

On March 17, 2021 (6), the Board of Supervisors (Board) directed the Chief Administrative Officer to seek input from stakeholders and develop options for a new ordinance that would promote transparency for building permits and right-of-way permits by requiring contractors to disclose subcontractor information for subcontractors working on projects permitted by the County of San Diego.

Each year the County processes around 13,000 building permits that use on average two to six subcontractors based on the scope and size of the project. Right-of-way permits for encroachment, construction, or excavation in the public right-of-way similarly include subcontractors. While the County verifies that contractors are in good standing with the Contractors State Licensing Board (CSLB) at the time of permit issuance through a direct link between the CSLB site and the County's automated land use permit platform, this information is not collected or verified for subcontractors.

Transparency in subcontractor disclosures associated with building permits and right-of-way permits will promote a culture of safety and legal compliance to ensure existing legal labor standards are upheld. Transparency can also help identify labor violators and unqualified operators and ensure accountability. The newly authorized Office of Labor Standards and Enforcement (OLSE) will work with Planning & Development Services (PDS) and the Department of Public Works (DPW) to establish enforcement mechanisms and tools, once OLSE is operational.

Since March, staff has performed benchmark research, conducted outreach to a variety of stakeholders, developed options for ordinance changes to require documentation of subcontractors, as well as developed options for information system changes to track subcontractor information. Today's options include short-term and long-term implementation.

*Existing Regulations and Benchmark Research*

The State of California requires that all construction work over \$500 be performed by a licensed contractor or an employee of the property owner. These requirements are typically enforced through State Labor Laws, the California State Licensing Board (CSLB), and the California Department of Justice (CDOJ). CSLB provides resources to validate license status and confirm license types online. CSLB and CDOJ consist of various enforcement divisions spread across licensing, contractor verification, complaints, fraud investigation, and enforcement through dedicated policing powers. To further assist these State entities, some jurisdictions have adopted ordinances to monitor and enforce State requirements locally.

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Within California, staff identified ordinance requirements in the cities of Santa Ana and Irvine to disclose subcontractor information during the building permit process. Ordinances for both jurisdictions were originally adopted over 30 years ago and include permit fines and fees to help encourage compliance. Their subcontractor disclosure forms are collected on a hard copy form towards the end of a project, prior to final inspection. Neither jurisdiction verifies the subcontractors listed were on site during construction. Santa Ana expressed that unless work was witnessed as it occurs, verification of who did the work was not possible.

Staff also identified existing practices for subcontractor disclosures for projects in the right-of-way in the City of El Monte, CA, Town of Tiburon, CA, and New York City, NY as a part of franchise agreements. Instead of right-of-way permits, these entities use right-of-way franchise agreements to require contractor and subcontractor disclosure. Franchise agreements are for specific periods of time and renegotiated regularly. This ongoing process provides the opportunity to increase transparency through specific disclosure requirements.

*Stakeholder Outreach*

Stakeholder outreach included engaging with community members, community planning groups, environmental stakeholder groups, construction and building stakeholders, labor advocates, and union stakeholders. Their feedback helped identify some key focus areas listed below.

The labor and union stakeholders included Southwest Carpenters Union, Communications Workers of America, San Diego Building Construction Trades, National Electrical Contractors Association, National Black Contractors Association, LiUNA Local 89, and Plumbers Pipe Fitters UA 230. They were interested in ensuring that workers are protected and that an enforcement mechanism is in place to ensure that all contractors are playing by the same rules. Labor groups suggested collecting subcontractor data for larger projects with an emphasis on commercial projects, larger tenant improvements (remodels and renovations), and multifamily residential. Labor groups thought these types of projects represented areas in which subcontractors may not be treated fairly or accurately reflected in employment records.

Labor groups suggested subcontractor data be provided after subcontractor selection but before work started on the project. One labor group suggested that information could be collected at the issuance of the permit but agreed that collection of data before a subcontractor starts work on the project would also work. This timing for collection of data before start of work would allow an enforcement entity sufficient time to intercede if a contractor was not following the requirements set forth by the State. Some labor stakeholders requested the County collect data on subcontractors beyond licensing and workers compensation, including categories such as Occupational Safety & Health Administration (OSHA) violations, workers compensation issues, and wage theft.

Labor groups noted there was not a need to collect subcontractor data on projects associated with the transport of energy, water, or sewer, as those projects have traditionally had greater safeguards in effect to ensure fair working environments. These projects also participated in State prevailing wage requirements for tracking work and compensation for subcontractors. However, these same groups noted subcontractor documentation should be required for commercial projects in the right-of-way that do not participate in the State prevailing wage program, and that the data should be

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collected after subcontractors are selected but before work starts on the project. The information would promote safe work environments by ensuring that qualified workers are working on these projects.

The construction and building stakeholders included the Building Industry Association (BIA), Associated General Contractors (AGC), Associated Builders and Contractors, and the Building Innovation Group. These stakeholders did not feel that the data collection was needed at the local level and shared the following comments. The data requested for subcontractors is information that the State requires a licensed contractor to verify before employing subcontractors on a project under their license. A program at the local level creates an additional layer of reporting that can slow down construction and increase the cost of construction. The BIA suggested the new requirements should be applied only to projects that are part of General Plan Amendments. The BIA also suggested the timing for the collection of subcontractor information be at the end of projects to ensure that the data provided is accurate and does not have to be constantly updated as different subcontractors are added, thus slowing down the construction process. The AGC suggested that requirements for private building and right-of-way permits should be related to other State Labor Law reporting requirements to keep tracking on projects simple. Some stakeholders, including both building stakeholders and labor groups, suggested that subcontractor contracts of \$25,000 or more, be a threshold for which permits the subcontractor disclosures should apply.

Building and construction stakeholders felt that subcontractor data collection was not necessary for projects within the right-of-way. Feedback included concerns that public projects in the right-of-way are regulated through public contract codes and subcontractor disclosures are addressed in existing utility franchise agreements. These stakeholders expressed concerns for potential project delays associated with any new requirements, which could negatively impact public projects supporting community needs.

*Ordinance and Program Phasing Options*

Options presented include both short-term (6 months) and long-term (12 – 18 months) implementation options and ordinance development options to achieve subcontractor transparency and disclosures through the building and right-of-way permits. Each category includes options designed to address subcontractor transparency independently. However, the Board can direct staff to implement either a single option independently or a combination of options. The Board may also provide new options that are modifications to the options presented.

*Options for Building Permits:*

Based on stakeholder feedback the following are options for building permit types that could require subcontractor disclosures:

- a. All new commercial, residential tracts (five or more lots), and multifamily construction projects (3 or more units)
- b. Commercial tenant improvement (renovation) projects that affect more than 10,000 square feet of space under the renovation
- c. Commercial tenant improvement (renovation) projects with a subcontractor contract value greater than \$25,000
- d. Projects associated with General Plan Amendments

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- e. Residential permits for work done on single family residences (all new homes, remodels, additions)

*Options for Applicable Right-of-Way Permits:*

Based on stakeholder feedback, the following are options for right-of-way permit types that could require subcontractor disclosures:

- a. Projects that are done in the right-of-way to provide for transport of energy, water, or sewer that are subject to State Prevailing Wage
- b. Projects in the right-of-way not subject to State Prevailing Wage
- c. Projects with a subcontractor contract value greater than \$25,000
- d. Residential projects (driveways and retaining walls)

*Options on Data to be Collected*

All stakeholders noted that it is important to make the process easy to report subcontractor information. When speaking to stakeholders, opinions varied on what information should be collected. The following options were provided by different stakeholder groups:

- a. Subcontractor specialty, name & contact, license number, and workers compensation policy
- b. Start and end dates of subcontractor work
- c. Subcontractor address
- d. Detailed scope of work done on job
- e. Verification of OSHA or wage violations
- f. Subcontractor Disadvantaged Business Enterprise (DBE) status
- g. Special safety license or training requirements for a subcontractor scope of work

*Options to Submit Information*

Based on stakeholder feedback, the following three options have been prepared for short-term and long-term phased implementation of the new program. Each option is designed to address subcontractor transparency independently. However, the Board can direct staff to implement either a single option independently or a combination of options.

- a. Hard copy collection: Subcontractor information could be collected in a hard copy format, using a new paper form, at the end of a project, similar to the cities of Santa Ana and Irvine.
  - o Benefits: Short term development (6 months)
  - o Drawback: Disclosure data collected post-construction and at the end of the project. Disclosure data can only be searched by specific project address or permit number
  - o Cost: Annual cost of \$50,000 (ongoing staff cost for the life of program)
- b. Short-term electronic submittal: Create a new form to collect subcontractor disclosure data. The form can be digitally scanned and uploaded (attached) to building and right-of-way permits in Accela, the County's automated land use permit platform. The disclosure data is available publicly for future enforcement and validation by local, State, and federal agencies.
  - o Benefits: Short term development (6 months)
  - o Drawback: Disclosure data can only be searched by specific project address or permit number
  - o Cost: Total cost of \$20,000

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-This option can be developed while the ordinance is being updated for Board consideration, such that it can then be implemented upon Ordinance approval.

- c. Long-term electronic submittal: Create a new option for Accela online permitting platform to add disclosure data digitally in standardized information fields. This option can accommodate data collection digitally during the construction lifecycle.
  - Benefits: Disclosure data is available publicly in Accela in a format that makes it easier to search and analyze to support data driven decision making. This option will allow the public and OLSE access to disclosure data with the ability to generate reports and queries. Funding will pay for creation of automated reports to be run for the more sophisticated analysis.
  - Drawback: Long-term development (12-18 months) with higher costs due to new technology development
  - Cost: Total cost of \$250,000

*Options for Timing of Data Collection:*

- a. Stakeholders had differing opinions on when to collect the subcontractor data, including:
  - Prior to permit issuance (prior to construction phases)
- b. Prior to subcontractor doing work on site (during construction phase)
- c. Within 14 days of when the subcontractor is selected and has started working (during construction phase)
- d. Prior to final inspection or final permit release (post construction phase)

Today's options presented to the Board include short-term and long-term implementation and outlined ordinance options necessary to achieve subcontractor transparency and disclosures through the building permits and right-of-way permits. Once Board direction is provided, staff will continue to develop the ordinance language and implementation mechanism and will return to the Board within 180 days for future Board ordinance adoption consideration.

**ENVIRONMENTAL STATEMENT**

Presenting those options for subcontractor transparency measures in County permits and obtaining direction from the Board of Supervisors (Board) is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, as it would have no potential for resulting in a physical change to the environment, directly or indirectly. It can also be seen with certainty that there is no possibility that the Board's direction to initiate work on any of the proposed options may have a significant effect on the environment.

Furthermore, providing direction to initiate work on any of the proposed options does not commit the County to any definitive course of action and would have no potential for resulting in significant physical change or effect on the environment directly or indirectly. Subsequent actions would be reviewed pursuant to CEQA and presented to the Board for consideration before implementation. Therefore, it can be seen with certainty that there is no possibility that today's action may have a significant effect on the environment and that the actions are exempt or not subject to CEQA.



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**LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN**

Disclosure requirements for subcontractors support the Sustainable Environments/Thriving Initiative in the County of San Diego's 2021-2026 Strategic Plan by supporting businesses that provide and promote services that increase the well-being of workers and increase consumer and business confidence through collecting data regarding the use of licensed subcontractors. Today's options for subcontractor disclosure requirements help ensure the San Diego region continues to be a vibrant region with planning, development, infrastructure, and services that strengthen the local economy and protect its workforce.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah Aghassi".

SARAH E. AGHASSI  
Deputy Chief Administrative Officer

**ATTACHMENT(S)**

Attachment A – Action Sheet

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**AGENDA ITEM INFORMATION SHEET**

**REQUIRES FOUR VOTES:** ☒ Yes ☐ No

**WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED**

☐ Yes ☒ No

**PREVIOUS RELEVANT BOARD ACTIONS:**

January 12, 2020 (9), Framework for Our Future: Ensuring Transparency and Open Government in San Diego County; March 17, 2021 (6), Subcontractor Transparency Measure for County Permits.

**BOARD POLICIES APPLICABLE:**

N/A

**BOARD POLICY STATEMENTS:**

N/A

**MANDATORY COMPLIANCE:**

N/A

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION  
NUMBER(S):**

N/A

**ORIGINATING DEPARTMENT:** Planning & Development Services

**OTHER CONCURRENCE(S):** Department of Public Works

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